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ABSTRACT

This paper highlights recent guidance and rulings from the Office of Civil Rights (OCR) of interest to administrators, advocates, and attorneys. It is a companion piece to Student Issues on Section 504/ADA: The Latest and Greatest. Compliance with Section 504 and the Americans with Disabilities Act (ADA) continues to involve debate and dialog on balancing the interest in protecting and serving individuals with disabilities with concern over creating and conferring unfair advantages or unnecessary accommodations. The first section of the paper gives a brief background on the OCR caseload. The following section is a summary of the most recent OCR policy guidance on the application of Section 504/ADA to elementary and secondary educational institutions. This second section includes frequently asked questions about protecting students with disabilities. The third and last section summarizes selected OCR cases against local school districts and other entities subject to OCR jurisdiction. These cases involve the waiver of regular high school diploma requirements, charter schools, extracurricular activities, class grades, and discipline. (RT)

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School Issues Under §504 and the ADA: The Latest and Greatest.

Steven R. Aleman

November 2002

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School Issues under § 504 and the ADA: The Latest and Greatest

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School Issues Under Section 504 And The ADA: The Latest And Greatest

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The focus of this presentation is on the administrative enforcement of Section 504 of the Rehabilitation Act of 1973 (§ 504) and Title II of the Americans with Disabilities Act (ADA) by the Office for Civil Rights (OCR), U.S. Department of Education, in the elementary and secondary education context. This session will highlight recent OCR guidance and rulings of interest to administrators, advocates and attorneys. This paper is a companion piece to *Student Issues on § 504/ADA: The Latest and Greatest*, by Perry A. Zirkel, at the 48th Annual Education Law Association (ELA) conference.ⁱ

Compliance with § 504 and the ADA continues to involve debate and dialog on balancing the interest in protecting and serving individuals with disabilities with concern over creating and conferring unfair advantages or unnecessary accommodations. The presenter will comment on how OCR had addressed balancing the rights of students with disabilities.

Background

In the OCR Report to Congress for fiscal year 2000, the agency reported that 55 percent of its caseload was devoted to § 504/ADA complaint investigations.ⁱⁱ Investigations are managed through a complaint resolution process that involves both OCR attorneys and investigators working with educators and families. Typically, OCR cases conclude with either a letter of finding or a complaint resolution letter (sometimes with an attached voluntary resolution agreement).ⁱⁱⁱ OCR employs a network of 12 regional offices across the nation to conduct its enforcement activities.^{iv}

Selected OCR Guidance

This part summarizes the most recent OCR policy guidance on the application of § 504/ADA to elementary and secondary educational institutions.^v

Protecting Students with Disabilities: Frequently Asked Questions about Section 504 and the Education of Children with Disabilities

Source: <http://www.ed.gov/offices/OCR/504faq.html>

This web-based resource provides OCR's answers to 45 common questions about § 504 in the schools. It addresses the areas of § 504's relationship to the Individuals with Disabilities Education Act (IDEA), the scope of § 504 eligibility, evaluations under § 504, placement decisions and procedural safeguards. Highlights of OCR's interpretative guidance include:

- If a student qualifies for services under both the IDEA and § 504, a school district must only develop an individualized education program (IEP) under the IDEA; a separate § 504 plan is not required.
- Section 504's definition of a student with a disability does not exclude current users of alcohol. However, § 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.
- A physician's medical diagnosis does not suffice as an evaluation but should be considered among other sources in evaluating a student with a disability or student believed to have a impairment which substantially limits a major life activity.
- If a student with a disability transfers to a district from another school district with a § 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines the plan is appropriate, the district is required to implement the plan in the proper placement.
- Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children, the parents' right to review educational records and the parents' right to appeal any decision regarding evaluation and placement through an impartial hearing.

OCR Cases of Interest

This part summarizes selected OCR cases against local school districts and other entities subject to OCR jurisdiction. Because of the volume of decisions issued by OCR, a full treatment of all of them is not possible here. The author has picked those cases that will facilitate discussion over the direction of § 504/ADA administrative enforcement.

Waiver of Regular High School Diploma Requirements

The nation is placing more emphasis on accountability for educational results such as through the No Child Left Behind Act (Pub. L. 107-110). How should OCR balance the interest in ensuring reasonable accommodations in testing while the education system strives toward greater accountability? These cases illustrate how OCR has tackled student requests to waive high school exit exam requirements.

Georgia Department of Education

- Citation: 35 Individuals with Disabilities Educ. L. Rep. (LRP) ¶ 195 (OCR March 26, 2001) (No. 04-01-1021)
- Issue: Whether the state education department discriminated against a student with a disability when it denied his request for a waiver from a state requirement that a student must pass the state graduation assessment in order to receive a high school diploma.
- Ruling: OCR held that the state education department did not violate § 504/ADA. The state education department denied the student's waiver request on the grounds that it believed the student would pass the state assessment with additional remediation or tutorial classes. OCR learned that the student had enrolled in remediation classes in his home district. OCR interviewed the student's treating physician who concurred that the student might pass with additional remediation given that the cognitive impact of his disability had now been mitigated with medication.

Fort Wayne (IN) Community Schools

- Citation: 36 Individuals with Disabilities Educ. L. Rep. (LRP) ¶ 214 (OCR Feb. 13, 2002) (No. 05-01-1214)

- Issue:** Whether the school district discriminated against a student with a disability when it denied his request for a waiver from a requirement that the student must pass the graduation qualifying examination in order to receive a high school diploma.
- Ruling:** OCR held that the district did not violate § 504/ADA. The school considered for the student alternative pathways to a diploma that did not require passing the graduation qualifying examination. The student did not qualify for an alternative pathway to a diploma because the courses he took, while appropriate to his needs, were not at the required proficiency level.

Charter Schools

The charter school reform movement continues to grow as states seek to offer choices to parents. How should OCR balance the interest in protecting the rights of students with disabilities while recognizing the instructional freedom and flexibility inherent in the charter school concept? These cases show the enforcement issues that OCR has confronted in charter schools.

PEAKS Charter School (MN)

- Citation:** 35 Individuals with Disabilities Educ. L. Rep. (LRP) ¶ 37 (OCR Dec. 13, 2000) (No. 05-00-1189)
- Issue:** Whether the charter school failed to provide a facility that was accessible to persons with mobility impairments and failed to provide accessible transportation to school and to off-campus school activities?
- Ruling:** The charter school and OCR entered into a voluntary resolution agreement to end the investigation over accessibility of the school's programs and activities for persons with mobility impairments. Among other things, the charter school agreed that all modifications or alterations made would be in accordance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS). To ensure that students with mobility impairments have access to all programs and activities offered by the school, the school committed that the van used for transporting these students will be in good repair.

Coeur d'Alene Charter Academy (ID)

- Citation:** 35 Individuals with Disabilities Educ. L. Rep. (LRP) ¶ 280 (OCR Oct. 5, 2001) (No. 10-01-1184)

- Issue:** Whether the charter school failed to evaluate and appropriately serve students with disabilities?
- Ruling:** The charter school and OCR entered into a voluntary resolution agreement to end the investigation over provision of appropriate services to students with disabilities and proper evaluations. Among other things, the charter school agreed to review and revise its § 504/ADA policies and procedures. The charter school also agreed to train staff on § 504/ADA requirements.

Extracurricular Activities

Extracurricular activities are an important part of a student's school experience. How should OCR balance the interest in providing access and an opportunity to participate in extracurricular activities for students with disabilities without unduly imposing upon schools and other students involved? These sample cases demonstrate OCR's approach in this kind of dispute.

Marion County (FL) School District

- Citation:** 37 Individuals with Disabilities Educ. L. Rep. (LRP) ¶ 13 (OCR Nov. 21, 2001) (No. 04-01-1301)
- Issue:** Whether the school district denied a student with a disability an equal opportunity to participate in the tryouts for the cheerleader squad?
- Ruling:** The district and OCR entered into a voluntary resolution agreement to end the investigation over the conduct of the cheerleader tryouts. Among other things, the district agreed that it would develop procedures that specify that students with disabilities are entitled to necessary related aids and services and/or program modification in order to accomplish the objective of equal opportunity to participate in extra curricular and interscholastic programs. The district promised that if the student tries out for the cheerleading squad, the district would provide the student with effective accommodations, including but not limited to, the opportunity to videotape the cheerleading sponsor's instructions and demonstrations.

Moses Lake (WA) School District No. 161

- Citation:** 36 Individuals with Disabilities Educ. L. Rep. (LRP) ¶ 218 (OCR Feb. 7, 2002) (No. 10-01-1213)

Issue: Whether the school district denied an opportunity for a student with a disability to compete for a position on the cheer team?

Ruling: The district and OCR entered into a voluntary resolution agreement to end the investigation over the selection process for the cheer team. Among other things, the district agreed that at the next available opportunity for students to compete for positions on the cheer team, the selection process would be conducted in such manner as is necessary to afford the student with a disability an equal opportunity to participate in the process. If the student chooses to compete for a position on the cheer team, she will be provided appropriate accommodations.

Class Grades

Grades as measures of academic success and their use in gaining further educational opportunities are a big concern to parents and students. How should OCR balance adapting classroom grading methods without interfering with the utility of grades as a uniform gauge of student progress? These are the latest OCR grading cases.

Triton (MA) Regional School District

Citation: 35 Individuals with Disabilities Educ. L. Rep. (LRP) ¶ 256 (OCR May 30, 2001) (No. 01-01-1044)

Issue: Whether the school district failed to revise the student's quarter grades as permitted under the student's IEP.

Ruling: OCR held that the district did not violate § 504/ADA. The school's interpretation of the IEP was that final grades that fell below a "B" would be adjusted to reflect the work the student completed over the summer. The IEP did not require that all of the student's grades for every quarter that fell below a "B" would be revised upward as a result of the work he completed over the summer.

Clover Park (WA) School District No. 400

Citation: 36 Individuals with Disabilities Educ. L. Rep. (LRP) ¶ 246 (OCR Feb. 6, 2002) (No. 10-02-1015)

Issue: Whether the school district failed to fully implement the student's individualized education program (IEP) during the current school year resulting in the student's low grade.

Ruling: OCR held that the district did not violate § 504/ADA. The school provided bimonthly progress report for core subjects per the IEP, reassigned him to a

different teacher and added a study skills period. The steps taken by the district benefited the student's academic progress. Further, the student was not prevented from participating in athletics because of his grades.

Discipline

Safe schools and fair student discipline are a priority for both educators and parents.

How should OCR balance the interest in preventing discriminatory punishment without creating a perceived double standard for students with disabilities? Some recent OCR cases covering discipline are below.

Aurora (CO) Public Schools

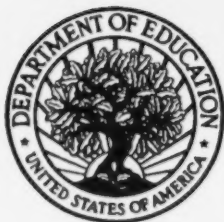
- Citation: 36 Individuals with Disabilities Educ. L. Rep. (LRP) ¶ 188 (OCR June 28, 2001) (No. 08-01-1051)
- Issue: Whether the school district failed to follow proper procedures during the manifestation determination process?
- Ruling: OCR held that the district violated § 504/ADA. The school refused to provide the student's parents with a requested copy of an incident report utilized at a manifestation determination review meeting. The school's refusal to turn over the incident report denied the student's parents with the opportunity to examine a relevant record in connection with a placement decision. The district should have provided the incident report to the parents prior to the manifestation meeting.

Independent School District #204 (MN)

- Citation: 37 Individuals with Disabilities Educ. L. Rep. (LRP) ¶ 75 (OCR April 11, 2002) (No. 05-02-1016)
- Issue: Whether the school district discriminated against a student with a disability by imposing discipline on him while not imposing discipline on a student without a disability involved in the same incident?
- Ruling: OCR held that the district did not violate § 504/ADA. The school principal relied upon a teacher who witnessed the incident. The discipline imposed was substantially consistent with the school's handbook. In prior incidents, students without disabilities were disciplined in the same fashion.

End Notes

- ⁱ The Perry A. Zirkel paper, *Student Issues on § 504/ADA: The Latest and Greatest*, is available in the ELA conference material.
- ⁱⁱ The percentage of OCR cases raising § 504/ADA issues was actually higher than 55 percent because that figure does not include those cases where multiple claims were presented (e.g., disability and racial discrimination allegations). The fiscal year 2000 Report to Congress is the most current available on the OCR web site (www.ed.gov/offices/OCR).
- ⁱⁱⁱ For a comprehensive treatment of OCR letters of finding and complaint resolution letters, see Perry A. Zirkel and Steven R. Aleman, *Section 504, the ADA and the Schools* (2000 + 2001 Supp.) (LRP Publications).
- ^{iv} For readers covered by the OCR regional office in New York City, please note that it was relocated due to the September 11th tragedy. You may check the OCR web site (www.ed.gov/offices/OCR) or contact the OCR national headquarters in Washington, DC at 1-800-421-3481 or 877-521-2172 (TDD) to confirm the New York regional office phone number and mailing address.
- ^v For older OCR policy guidance, see Perry A. Zirkel and Steven R. Aleman, *Section 504, the ADA and the Schools* (2000 + 2001 Supp.) (LRP Publications).



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